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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re A.J., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

Deanna J.,

Defendant and Appellant.

D070293

(Super. Ct. No. EJ3882C)

APPEAL from an order of the Superior Court of San Diego County, Gary M.

Bubis, Judge. Affirmed.

Joseph T. Tavano, under appointment by the Court of Appeal, for Defendant and Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Dana C. Shoffner, Deputy County Counsel, for Plaintiff and Respondent.

Deanna J. appeals from an order terminating parental rights to her daughter, A.J., under Welfare and Institutions Code section 366.26.¹ Deanna contends the juvenile court erred in not applying the beneficial relationship exception to termination of parental rights and adoption under section 366.26, subdivision (c)(1)(B)(i). We conclude the court did not err and affirm the order terminating Deanna's parental rights.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2015, the San Diego Health and Human Services Agency (the Agency) filed a dependency petition for then two-year-old A.J., alleging she had suffered or there was a substantial risk she would suffer serious physical harm.² (§ 300, subd. (b).) The Agency found A.J. existing in uninhabitable living conditions; for example, the family's apartment unit was littered with garbage piled several feet high, covered in and stinking of urine, infested with bugs, hazardous for children, "unsanitary," and filthy. In addition, Deanna's medications were clearly accessible to the children living in the house. The Agency discovered that A.J. had ingested and vomited an unknown quantity of Deanna's morphine within the past year while not being supervised. A.J.'s older half brothers, aged eight and seven, could not remember the last time they had been bathed. The court ordered A.J.'s detention and placed her with a nonrelative extended family member (NREFM). From late February to early April 2015, Deanna

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

² Since A.J.'s father is not a party to this appeal, we accordingly limit our factual recitation.

was permitted to visit A.J. twice weekly for two hours at a time, though she canceled and failed to reschedule a few of the visits.

In April 2015, the court made true findings on an amended section 300 petition, which contained additional allegations concerning A.J.'s neglect due to Deanna's mental illness, developmental disability, or substance abuse. Evidence at the contested jurisdictional and dispositional hearing showed Deanna could not safely care for A.J. Deanna used prescribed morphine one to four times daily for pain due to different medical issues, and her children reported she "sleeps most of the day." Deanna also suffered from several mental conditions, including depression, anxiety, panic attacks, and bipolar disorder, which required additional medications. She admitted abusing alcohol and harming herself the prior year by cutting her skin. Deanna was not taking A.J. to routine medical appointments or addressing her developmental and emotional needs. The court continued A.J.'s placement in the home of a NREFM and ordered the Agency to provide the parents with reunification services and reasonable supervised visitation.³ The court gave the Agency discretion to elevate the parents' visits to unsupervised.

At the contested six-month review hearing in November 2015, the juvenile court terminated reunification services for Deanna, finding she had not made substantive progress on her case plan. She did not attend individual therapy, refused substance abuse treatment, failed to complete a parenting education program, and failed to undergo a psychological evaluation. The assigned social worker observed that Deanna had a

³ At this point, the court also placed A.J.'s half brothers with their father in Texas and terminated its jurisdiction over the boys.

"pattern" of not starting services, or starting but not completing them for one reason or another, including in other voluntary child protection cases.

As for visitation during the review period, the Agency reported Deanna received supervised visits once per week with A.J. and the visits were "positive" and "appropriate" when they occurred. However, she missed three visits between April and June, causing the visitation center to cancel its services. After one week, the visits resumed at the visitation center and proceeded consistently.

The court held a contested section 366.26 hearing in April 2016 to select A.J.'s permanent plan. The evidence showed that since February 2015, A.J. had been living with and thriving under the care of a NREFM caregiver or her paternal grandmother (PGM). For several months, PGM had been meeting all of A.J.'s physical, mental, emotional, and educational needs, and was committed to adoption. When she was first removed from her parents, A.J. had untreated behavioral issues (i.e., aggression and hyperactivity), sleep problems, speech delays, and deficient social skills. Since she had been removed from her parents' care, A.J.'s behavior had significantly improved, she was developmentally on track, attended speech therapy, slept well, and played nicely with other children. PGM frequently took A.J. outdoors for play time, which helped channel A.J.'s energy.

Regarding visitation, the Agency's section 366.26 report, addendum report, and trial testimony, described Deanna's more recent visits with A.J. Deanna missed one scheduled visit and did not schedule another visit, but she typically visited A.J. once a week for two hours at a time. During these supervised visits, Deanna was affectionate

and loving toward A.J. and displayed appropriate parenting skills. Occasionally, Deanna used "food as an activity" with A.J., and visitation monitors would remind her not to overfeed A.J. with snacks or candy. A.J. sometimes cried at the end of visits with Deanna, though the Agency could not determine whether A.J. cried due to feelings of attachment or because she simply did not want to stop her current activity.

In the Agency's assessment, the benefits of adoption outweighed the possible harm to A.J. from terminating Deanna's relationship with her. The Agency acknowledged a loving relationship between Deanna and A.J., but based its opinion on the fact that Deanna had not achieved unsupervised visits; Deanna could not provide the stability, consistency, and safety that A.J. needed; and A.J. had spent the last 14 months out of her parents' care, having her daily needs met by others. When asked to describe A.J.'s relationship with her mother, the assigned social worker testified that A.J. enjoyed visits with Deanna "similar to a relative that [A.J.] enjoys seeing regularly." Although the social worker believed A.J. could have "questions" and/or experience some sense of loss if she could not see Deanna again, the social worker also stated that A.J. was growing attached to PGM and went to PGM for help and comfort on a daily basis.

Deanna testified regarding the strength of her relationship with A.J. and that she acted like A.J.'s "mom" during their visits. Deanna agreed with the Agency that A.J. needed permanence and stability, but believed she could be a stable presence in A.J.'s life as A.J. was getting accustomed to a new school and home.

After considering the evidence and hearing counsel's arguments, the court found by clear and convincing evidence A.J. would likely be adopted and no exceptions to

adoption applied. The court acknowledged Deanna and A.J. loved each other, but found that Deanna did not occupy a parental role in A.J.'s life. The court discussed how Deanna was not fulfilling her parental obligations through visits lasting "one or two hours at a time . . . in a supervised type setting[.]" and recalled the difficult circumstances under which A.J. initially became a juvenile dependent. In weighing the benefits of adoption with severing A.J. and Deanna's relationship, the court concluded A.J. would not be greatly harmed if she could no longer see her mother. The court terminated Deanna's parental rights and ordered A.J. placed for adoption.

DISCUSSION

I. The Court Did Not Err in Finding That the Beneficial Relationship Exception to Adoption Did Not Apply

Deanna's sole contention on appeal is that the juvenile court erred in finding the beneficial relationship exception to adoption did not apply. (§ 366.26, subd. (c)(1)(B)(i).) She argues she maintained regular visitation with A.J. sufficient to establish a parental role and terminating her parental rights would greatly harm A.J.

A. Guiding Principles

At a section 366.26 permanency planning hearing, once the juvenile court finds by clear and convincing evidence a child is likely to be adopted within a reasonable time, the court is required to terminate parental rights and select adoption as the permanent plan unless the parent shows that termination of parental rights would be detrimental to the child under one of several statutory exceptions. (*In re Michael G.* (2012) 203 Cal.App.4th 580, 589.) One of these exceptions is the beneficial relationship

exception to adoption, which applies when "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) The burden is on the party seeking to establish the beneficial relationship exception to produce evidence establishing the exception is applicable. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.)

We apply the substantial evidence standard of review to the juvenile court's factual findings on the existence of a beneficial parental relationship and the abuse of discretion standard to the determination of whether there is a compelling reason for finding that termination would be detrimental to the child. (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395, citing *In re J.C.* (2014) 226 Cal.App.4th 503 and other cases.) When reviewing the sufficiency of evidence to support a finding, "we presume in favor of the order, considering the evidence in the light most favorable to the prevailing party, giving the prevailing party the benefit of every reasonable inference and resolving all conflicts in support of the order." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*Autumn H.*))

B. *Analysis of Juvenile Court's Findings*

We accept the Agency's concession that Deanna maintained regular visitation with A.J. We conclude, however, there was insufficient evidence A.J. would "benefit from continuing" the parent-child relationship.

The statutory phrase "benefit from continuing the relationship" (§ 366.26, subd. (c)(1)(B)(i)) refers to a parent-child relationship that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the

strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) "The balancing of competing considerations must be performed on a case-by-case basis and take into account many variables, including the age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs." (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 811.) "If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Autumn H.*, at p. 575.)

To establish a beneficial relationship, "the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits—the parent must show that he or she occupies a parental role in the life of the child." (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527; see *In re Jason J.* (2009) 175 Cal.App.4th 922, 936-938 (*Jason J.*); *In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) The evidence must show more than merely "a loving and happy relationship" (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1419), and the parent must be more than " 'a friendly visitor or friendly nonparent relative' " (*Jason J.*, at p. 938). "A child who has been adjudged a dependent of the juvenile court should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree, but that does not meet the child's need for a parent." (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) A beneficial parent-child relationship characteristically "arises from day-to-

day interaction, companionship and shared experiences." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.)

Here, substantial evidence supports the juvenile court's finding that Deanna did not occupy a parental role in A.J.'s life, and Deanna did not establish a beneficial parent-child relationship within the meaning of the statutory exception. A.J. was only two years old when removed from her parents' custody due to severe neglect. She needed parents to provide daily care and interaction in a stable, safe home—not merely playtime in two-hour increments, once a week. Deanna was not meeting A.J.'s needs, and she had not progressed to unsupervised visits throughout the case. Moreover, Deanna's original protective issues remained unresolved. The social worker described Deanna as a relative who A.J. enjoyed visiting rather than a parental figure. The undisputed evidence showed that PGM was meeting A.J.'s physical, mental, emotional, and educational needs, and was committed to adoption.

Moreover, the juvenile court analyzed whether severing Deanna and A.J.'s relationship would result in A.J. being "greatly harmed," *Autumn H.*, *supra*, 27 Cal.App.4th at p. 575, and concluded she would not. We cannot say the court abused its discretion. (Cf. *In re Scott B.* (2010) 188 Cal.App.4th 452, 472 [emotionally unstable 11-year-old boy who had lived with mother for first nine years of his life would likely suffer serious harm if frequent visits with mother were discontinued].) A.J. was three when parental rights were terminated, she had been out of her parents' custody for 14 months during which time she thrived, had her needs met, grew stronger both emotionally and physically, gained speech, and developed interpersonal skills.

Substantial evidence supports she would continue to thrive in an adoptive home with a parent committed to meeting all her needs. Despite positive visits with A.J., Deanna did not establish she occupied a parental role in A.J.'s life or A.J. would suffer great harm if Deanna's parental rights were terminated. (*Jason J.*, *supra*, 175 Cal.App.4th at p. 938; *In re Helen W.* (2007) 150 Cal.App.4th 71, 81 [a friendly and loving relationship "is simply not enough to outweigh the sense of security and belonging an adoptive home would provide"].)

DISPOSITION

The order terminating Deanna's parental rights is affirmed.

BENKE, Acting P. J.

WE CONCUR:

HALLER, J.

PRAGER, J.*

* Judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.